



# Helping Pro Se Litigants to Help Themselves

This outline is designed to provide a brief overview of the trends in pro se litigation and the responses by the courts and the legal community, particularly in the area of technology. It is complemented by material on two websites.

[www.unbundledlaw.com](http://www.unbundledlaw.com)

[www.peoples-law.org](http://www.peoples-law.org)

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## Trends in Pro Se Litigation

It is the common experience of most court system in the United States that there has been a rising tide of pro se litigants flooding a justice system designed, in large part, for the traditional full representation model. Virtually all aspects of the system, from the rules to the training of judges and court staff to the physical layout of the courthouses themselves, have been oriented to cases in which knowledgeable attorneys represent the parties. The Conference of State Court Administrators recently characterized this trend as “unprecedented and showing no signs of abating.”

### WHAT IS THE NATIONAL PICTURE ON PRO SE LITIGATION?

*(National Center on State Courts study of 16 large urban trial courts in 1991-1992 – Domestic Relations cases)*

- 71% of cases had at least one unrepresented party. In 18% both parties were pro se litigants. (Both parties had counsel in only 28% of cases.)
- The percentage of cases where **both parties were pro se** ranged from ↓ 1% in Dayton, OH to 47% in Oakland, CA
- The percentage of cases where **both parties were represented** ranged from 12% in Washington, DC to 47% in Des Moines, Iowa

*(A California study of family matters from 1991 to 1995 found the following)*

- One party appeared pro se in 2/3 of all domestic relations cases and in 40% of all child custody cases.
- California reports in 2001 that over 50% of the filings in custody and visitation are by pro se litigants. Urban courts report that approximately 80% of the new divorce filings are filed pro se.

A 1998 study by the Boston Bar Association found that 66% of the cases in Probate and Family Court in Boston involved at least 1 pro se party.

*(Pro se litigation study on tort and general civil litigation in 45 urban trial courts reported in the Justice Statistics – Special report April 1995)*

- Average of 3% of all tort cases had at least one pro se party
- In Chicago 30% (in 1994 and 25% in 1995) of all new general civil actions filed for less than \$10,000 of damages were filed pro se. Landlord tenant actions were filed pro se 28% of the time.

In Maricopa County in Arizona **the incidence of pro se litigants doubled** in the period between 1980 (24% of cases had 1 pro se litigant) and 1985 (where the rate had reached 47%). By 1990, **88% of the cases** involved at least one pro se litigant and no lawyers were involved in more than half of the divorces.

### WHO GOES PRO SE?

*(ABA Study of Family Law Pro Se, Maricopa County, AZ, 1993)*

- Tend to have lower income (\$50,000 or less in income substantially increases chances of pro se), *but* 20% said they could afford a lawyer

- Younger in age
- Higher Education (Most have some college)
- No children
- No real estate or personal property
- Married less than 10 years

### **WHY DO PEOPLE CHOOSE PRO SE?**

*(Data from the 1996 report of the Pro Se project operated by the University Of Maryland Law School)*

- 57% said they could not afford a lawyer
- 18% said they did not wish to spend the money to hire a lawyer
- 21% said they believed that their case was simple and therefore they did not need an attorney

*A 1998 ABA-commissioned study found some public beliefs that may influence the choice:*

- 78% believe “It takes too long for the courts to do the job.”
- 77% believe “It costs too much to go to court.”

*The 1994 ABA Study of Legal Needs found that:*

- Predominate reasons for *low-income* households to not seeking legal help were:
  - “it would not help”
  - “costs too much”
- Predominate reasons for *moderate-income* households to not seeking legal help were:
  - “not really a problem”
  - “can handle it on my own”
  - “a lawyer cannot help”

Research in California indicates that pro per (pro se) representation is not solely due to financial limitations. And that “...a significant portion of the family law pro pers in California are not poor or poorly educated.” *(Reported in the National Center on State Courts study of 16 large urban trial courts in 1991-1992 – Domestic Relations cases)*

**Attitudes toward Self-help and Control Over Problem-Solving** - The consumer movement of the 1970’s appears to have been influential in creating a norm for empowering people to resolve their own problems. There is also widespread knowledge that an attorney is not required in order to go to court. In the American Bar Association’s Perceptions study, while only 26% were highly knowledgeable about the justice system, 88% of the respondents identified the following statement as inaccurate: “If you go to court, you are required to have a lawyer.”

The American Judicature Society report, Meeting the Challenge of Pro Se Litigation, identified anti-lawyer sentiment as well as the growth of do-it-yourself materials as key factors in the upward trend of pro se litigation. There is also a perceived linkage between value and cost with the public identifying some areas as simple enough for self-representation. *Do People Go Pro Se Because They Cannot Find a Lawyer?* 69% agree with the statement that “It would be easy to get a lawyer if I need one.” (59% of those with income under \$35,000) *(ABA Legal Needs Study)*

### **Attitudes toward Lawyers** *(ABA Legal Needs Study)*

- 50% disagree that lawyers “try to help make a divorce simpler and less painful.” (21% were neutral)
- Interestingly there is more distrust that lawyers can “make a divorce simpler and less painful” among those with incomes above \$75,000 (82%) than among those with income under \$35,000 (63%).
- 45% believe that “Lawyers are more concerned with their own self promotion than their client’s best interest.” (22% were neutral)
- 51% believe that “we would be better off with fewer lawyers”
- Overall, those with more experience with lawyers were more positive towards lawyers and the justice system.

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## **Policy Response by the Courts and Legal Community**

At the national policy level a number of activities have been taking place over the last few years.

**August 2000 – Conference of State Court Administrators approves “ Position Paper on Self-Represented Litigation”** with 11 recommendations on meeting the needs of the self-represented through court-sponsored information systems, data collection, judicial education, protocols for the judiciary in conducting proceedings with self-represented litigants and the formation of a joint task force of the Conference of Chief Justices and COSCA to develop an action plan. Commentary included a suggestion that discretionary guidelines and protocols be developed for “considering the relaxation of rules of procedure and evidence to remove obstacles for the self-represented litigant.”

**October 2000 - 1st National Conference on “Unbundled” Legal Services held in Baltimore - A** multidisciplinary conference on discrete task representation issues was convened by the Maryland Legal Assistance Network (MLAN) and 11 national and state partners. Over 225 lawyers, judges, “dot.com” legal entrepreneurs, mediators and law school clinicians (from Russia, Canada and 34 U.S. states) attended. Audiotapes and materials from the 29 presentations are available.

- MLAN **compiled previous recommendations and study results** from national and state court and bar affiliated task forces and studies.
- MLAN conducts **informal national survey of ethical opinions** related to “Discrete Task Lawyering
- **26 Recommendations** to the bar, courts, legislatures and legal services delivery systems were developed and were been disseminated nationally. A spring 2002 issue of the Family Courts and Conciliation Review contains the final recommendations and other articles on “unbundled” legal services.

**“Unbundled” Law Resources Website** -MLAN created a national website – [www.unbundledlaw.org](http://www.unbundledlaw.org). The website contains much of the material collected for the national conference plus later materials from some states.

**January 2001 – The Conference of Chief Justices** passed a resolution encouraging the “expansion of the types of legal assistance to self-represented litigants, including exploration of the role of non-attorneys”. (Resolution 23)

**November 2001 - the joint task force of the Conference of Chief Justices and Conference of State Court Administrators** held a 2-day conclave soliciting input from national experts on pro se litigation including representatives from the Legal Services Corporation, the American Bar Association, the National Association of IOLTA Programs, the National Institute of Court Justice; state initiatives through the California Administrative Office of the Courts and the Maryland Legal Assistance Network (MLAN); and consultants working on the issues. The Task Force presented its preliminary report at the January meeting with a full session set for the August joint meeting.

**February 2002 – The American Bar Association** adopts amendments to the Model Rules and a new **Rule 6.5** provides for special treatment of the **conflicts of interest rules for non-profit and court-annexed limited legal services programs**.

**“Unbundled” Legal Services” Court and Bar Rule Changes** – In addition, related action has been taken in some states. States with material that can be found on the unbundledlaw.org website include:

- **Maine**
  - Amendments to the Maine Bar Rules - Maine's "unbundling" rules were promulgated on May 17, 2001, effective July 1st.

- Amendments to the Maine Rules of Civil Procedure - Maine's "unbundling" rules were promulgated on May 17, 2001, effective July 1st.
- **California**
  - Report on Limited Scope Legal Assistance with Recommendations for California
    - Released on October 2001 by the Limited Representation Committee of the California Commission on Access to Justice
    - Recommendations approved on July 2001 by the Board of Governors of the California State Bar.
- **New Mexico**
  - Amended on the 30th of January 2001, the New Mexico Supreme Court modified the Official Rules of Professional Conduct and the official comments (Rules 16-102 and 16-303) to clarify "limited representation" provisions. The comments highlight how the New Mexico rule differs from the ABA model rule.

## **Response by the Courts and the Legal Community – Impact of Technology**

There are a wide range of responses to the rise in pro se litigation and to the changes in technology, which allow for greater and more sophisticated dissemination of legal information and materials. In addition the web and other technology are creating new ways in which the public is being educated on legal topics, selecting “unbundled” legal services, managing their own cases, and finding help from the courts in services targeted to self –represented litigants. Many raise questions as to the best approach to provide access to the legal system. Ethical issues abound. Others blend entertainment with serious legal endeavors, yet nonetheless may influence public perception and action.

- Court forms with instructions (in hard copy and posted on the Internet)
- Instructional pamphlets, brochures, and videos available at the courts and at the office of legal services providers
- Self-service centers in the courts where “kiosks” provide automated document assemble and, in some cases, video instruction.
- Legal self help software packages
- Web-based e-mail legal advice services
- On-line form preparation services operated by a variety of entities
- On-line subscription newsletters on legal topics
- On-line intake screening tools for law firms
- Self-service centers with assistance by family court staff
- Legal clinics for pro se litigants operated by the private bar and by legal services providers
- Legal advice hotlines some operated by non-profits and others on a fee-per-call basis. Some operate as stand alone services while other s as intake or referral mechanisms.
- Unified family courts
- Research on pro se and other brief services formats, including outcomes-based evaluations are underway
- Pro bono attorney support for pro se programs
- Case bidding services in which an individual poses a problem and several lawyers bid on assisting the person.
- Court TV
- On-line mediation and other forms of alternative dispute resolution
- Court and legal services assisted pro se programs with panels of attorneys willing on to provide “unbundled” legal services.

## One State's Approach – Maryland

- **The pro se picture** - In Baltimore City, at least one party is unrepresented in 65% of the domestic relations cases filed.
- **Assisted pro se programs** - There are pro se programs (funded by the courts) assisting pro se litigants in every county in the state. Most provide legal information, forms and some advice in a wide variety of family law issues.
- **Current statewide statistics of nearly 40,000 users of the assisted pro se programs for FY 2002 show:**
  - 60% were women
  - 44% described themselves as African American and 9% as Hispanic
  - The vast majority had **modest incomes** with approximately
    - 72% showing a *household* income below \$30,000 (over 40% have incomes below \$15,000)
    - 92% of the total served had household incomes below \$50,000.
  - **Case types** –
    - 38% - Divorce/Annulment/Separation
    - 32% - Custody
    - 16% - Child Support
    - 11% - Visitation
    - 3% - Alimony/Name Change and Paternity

Some assisted pro se programs offer assistance with matters **other than family law**, although family law matters represent the vast majority of assistance requests.

*For example* in Prince George's County, a recent report showed that 72% of the case handled were in the family law area, with consumer a distant second at 9% of cases handled.

- **Education statistics show a fairly high degree of education among pro se program users**
  - 46% have completed high school
  - 28% have completed some college
  - 11% have less than a high school education
  - 5% - Advanced degrees
  - 9% - Bachelor's degree
- **Family Law Hotline and the Legal Forms Helpline** - Two statewide toll free hotlines are operated by legal services providers and offer legal information over the telephone to low and moderate income persons. Both lines are staffed by attorneys – the former offers guidance in a variety of family law matters while the latter focuses on assistance with court forms – primarily in the domestic area.
- **Peoples Law Library** – [www.peoples-law.org](http://www.peoples-law.org) - is a public access website is sponsored by the Maryland Legal Assistance Network (MLAN) and is a joint endeavor on the part of the Maryland legal services community. In addition to the legal information in a variety of topics, we are also seeking to develop tools to assist self-help litigants and to complement the assisted pro se programs in the state. A key part of this is the development of

### On-line Self-diagnostic Divorce Quizzes

**Our goal** is to develop a user-friendly web-based set of tools to help the public

- (1) gain a quick overview of the issues and types of relief
- (2) analyze the basic facts of their case to spot the issues where attorney help is critical and
- (3) offer information (where appropriate) on the practical nuts and bolts of self-representation.

The tools are not considered a substitute for attorney representation but rather a triage tool to help those who are considering going pro se. The tools are designed to help the person to realistically assess their case and to find the help that they need. Ideally, the goal is to offer the type of general information and assessment that an attorney might give a client at the first interview to help the person to understand the process, types of relief and a general but realistic assessment of the available options.